

B.

**Office of Consumer Credit
Commissioner**

Industry

and

Departmental Operations

and

Legislative Activities

**Office of
Consumer
Credit
Commissioner**



Leslie L. Pettijohn
Commissioner

2601 N Lamar Blvd
Austin, TX 78705
www.occc.state.tx.us

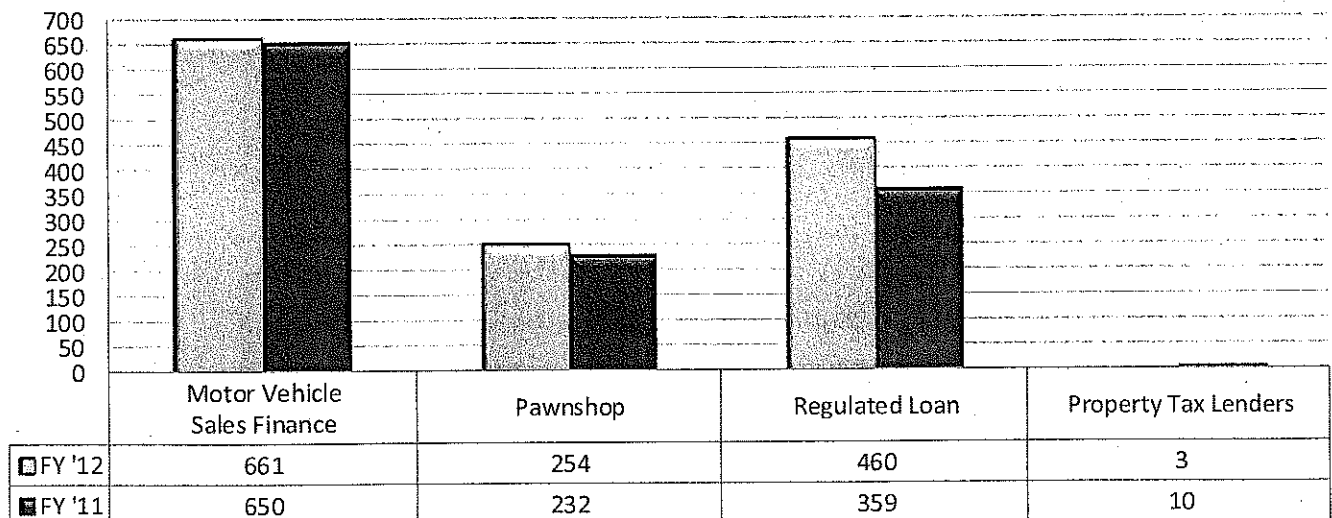
512-936-7600
Fax: 512-936-7610
Consumer Helpline: 800-538-1579

MEMORANDUM

TO: Finance Commission Members
FROM: Rudy Aguilar, Director of Consumer Protection
DATE: April 3, 2012
SUBJECT: Consumer Protection Activities

EXAMINATION

**Examinations Conducted: Sept - Feb
Fiscal Year Comparison**



Property Tax Lending examinations had been delayed pending completion of the survey instrument. The survey instrument has been completed and the process of conducting the survey

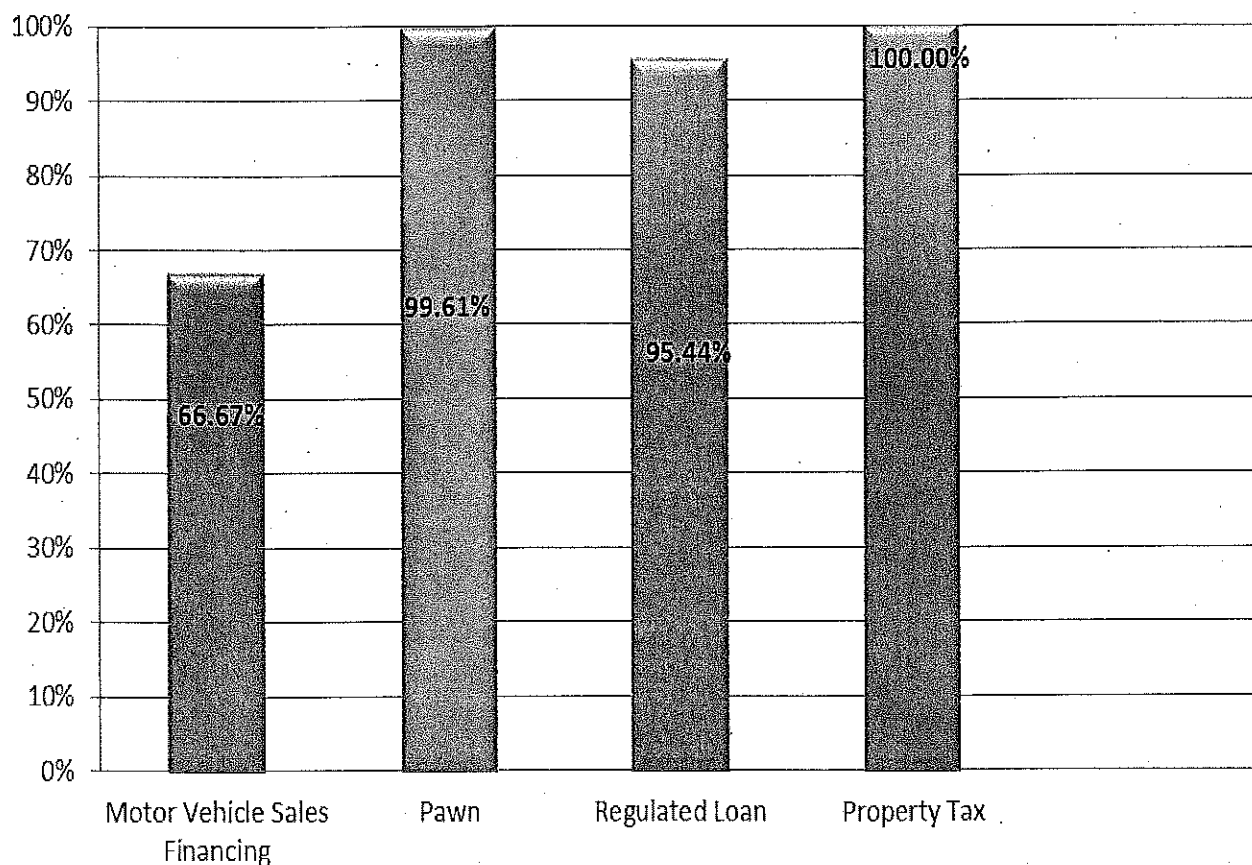
in coordination with examinations has begun. We will complete fieldwork by early May 2012 so that the required report can be presented to the Texas Legislature in June 2012.

The Credit Access Business (CAB) examination process has begun. We have completed a few initial examinations and are refining our exam process. The scheduling of CAB examinations will begin in earnest in mid-April 2012.

Gary Meissner, Consumer Assistance manager, made presentations at the TxDOT DMV Dealer seminars in February (San Antonio) and March (Waco). Sue Jevning, OCCC communications specialist, was also in attendance at the Waco seminar.

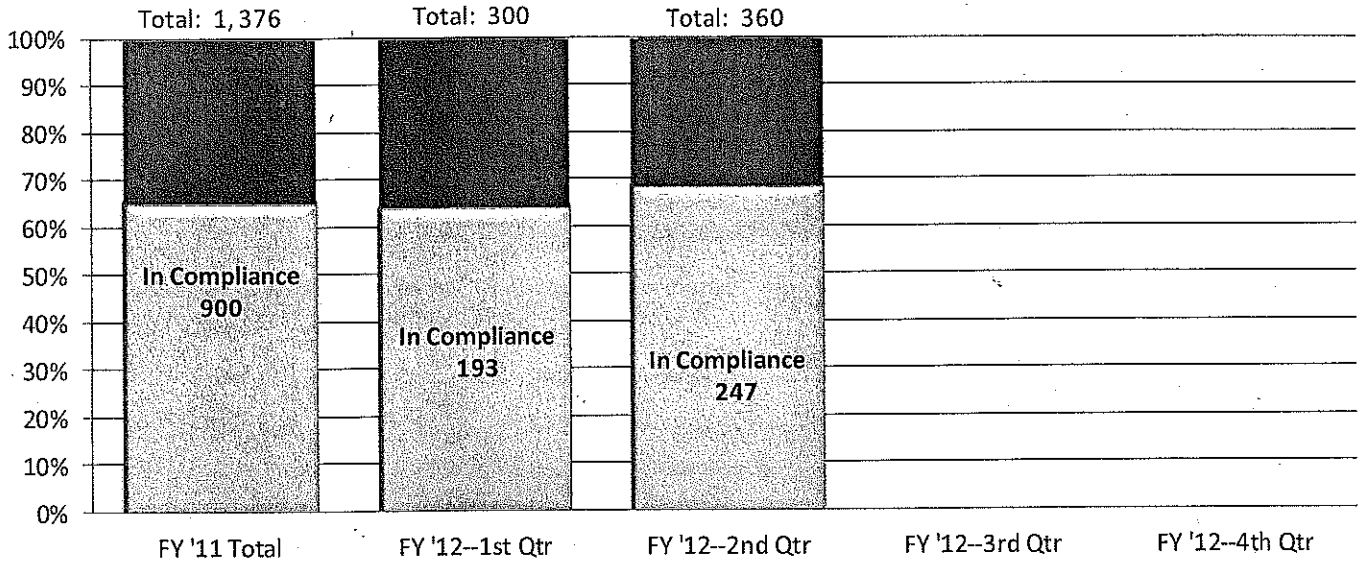
Jeffery Diggs has been hired to fill the Houston examiner position. He reports to work April 16, 2012, with training beginning at that time. Interviews were conducted for the examination administrative technician vacancy. We anticipate hiring for that position before the end of April.

Acceptable Level of Compliance FY '12 (Sept 2011 - Feb 2012)



Comparison of our motor vehicle sales finance examination activities in the most recent two years is noted on the chart that follows. The level of compliance this fiscal year has increased from 64.33% the first quarter to 68.61% at the end of the second quarter. The combined level of compliance for the first six months of fiscal year 2012 (66.67%) notes a slight improvement from fiscal year 2011 (65.41%).

Chapter 348 Examinations: Compliance Levels

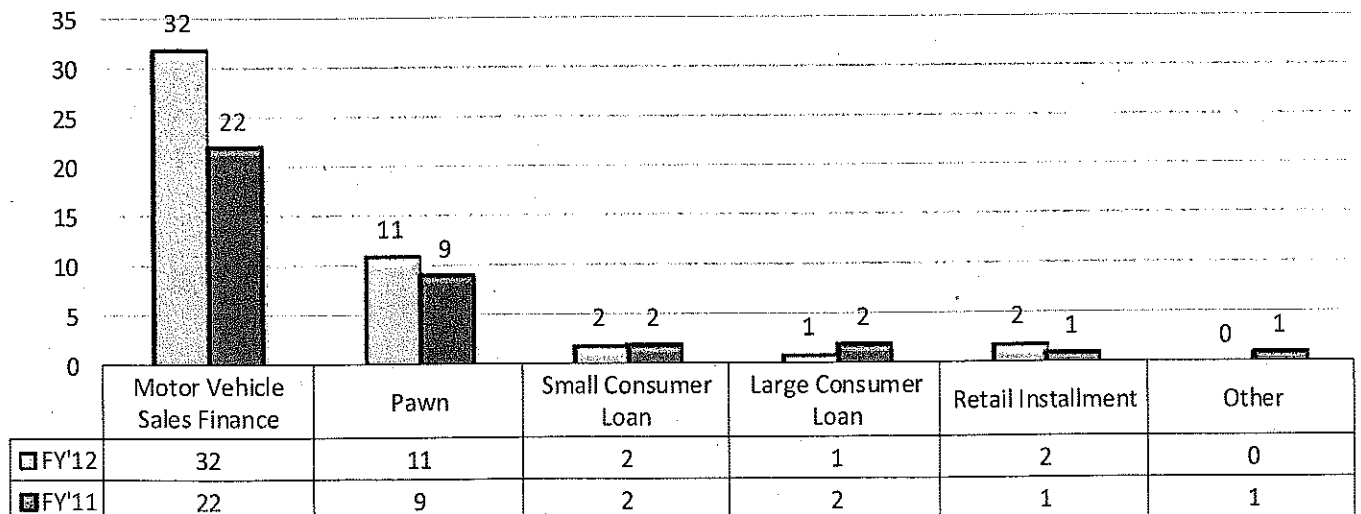


INVESTIGATION

Investigations Completed

FY '12 (Sept 2011 - Feb 2012) Total: 48

FY '11 (Sept 2010 - Feb 2011) Total: 37

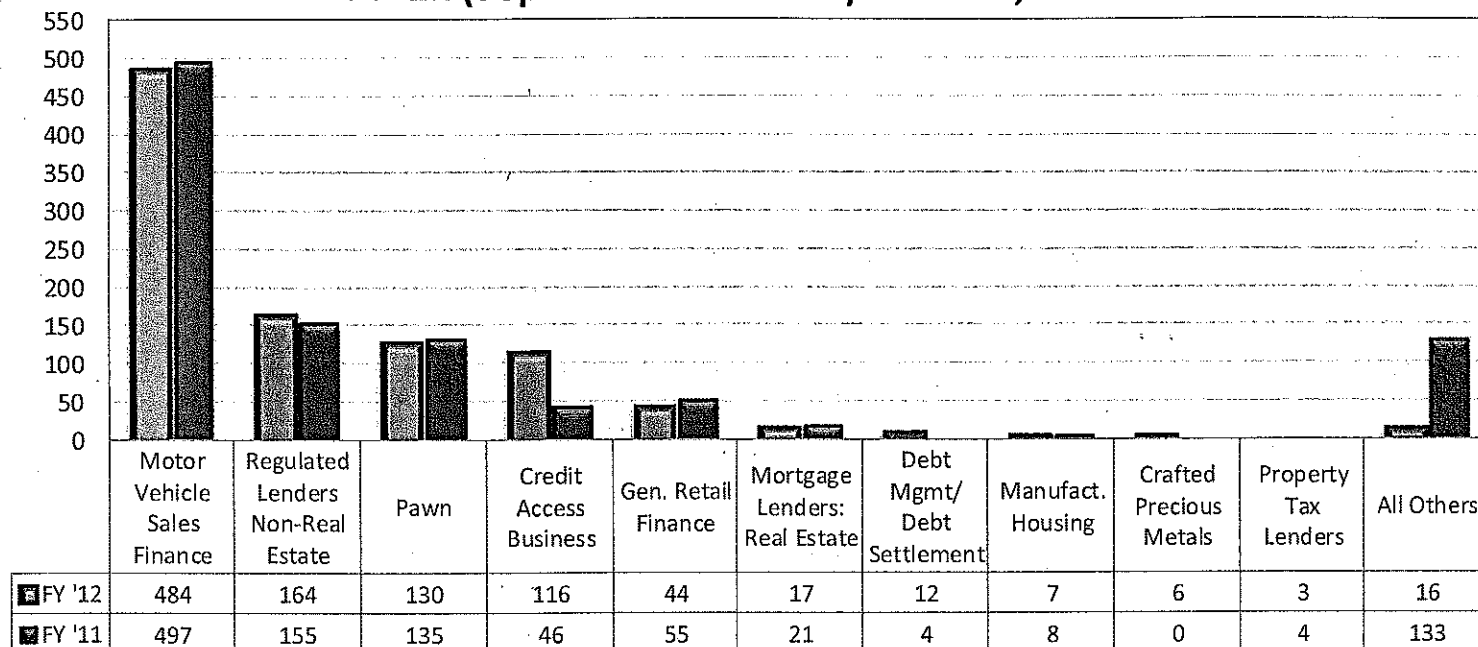


CONSUMER ASSISTANCE

Complaints Processed

FY '12 (Sept 2011 - Feb 2012) Total: 999

FY '11 (Sept 2010 - Feb 2011) Total: 1,058



The Consumer Assistance area has had several significant staff developments in this month. First, Gary Meissner has retired effective March 31, 2012. Dallas Teston (Investigator I) applied for and was selected to fill the Financial Examiner I vacancy in the San Antonio region effective April 1, 2012. Deborah Skidmore (Investigator I) has been transferred to the licensing section effective April 1, 2012.

The manager of Consumer Assistance position will be posted internally. The two investigator positions will be posted for open applications.

Motor Vehicle Sales Finance complaints remain our most frequent complaint category. Complaints are regarding alleged inappropriate repossessions, collection tactics, and the application of payments.

The marked increase in CAB complaints is primarily due to the disclosure of our contact information on CAB documents. Complaints are primarily about the amount of fees, lack of understanding regarding the initial contract terms, the renewal process, and collection tactics.

LICENSING REPORT

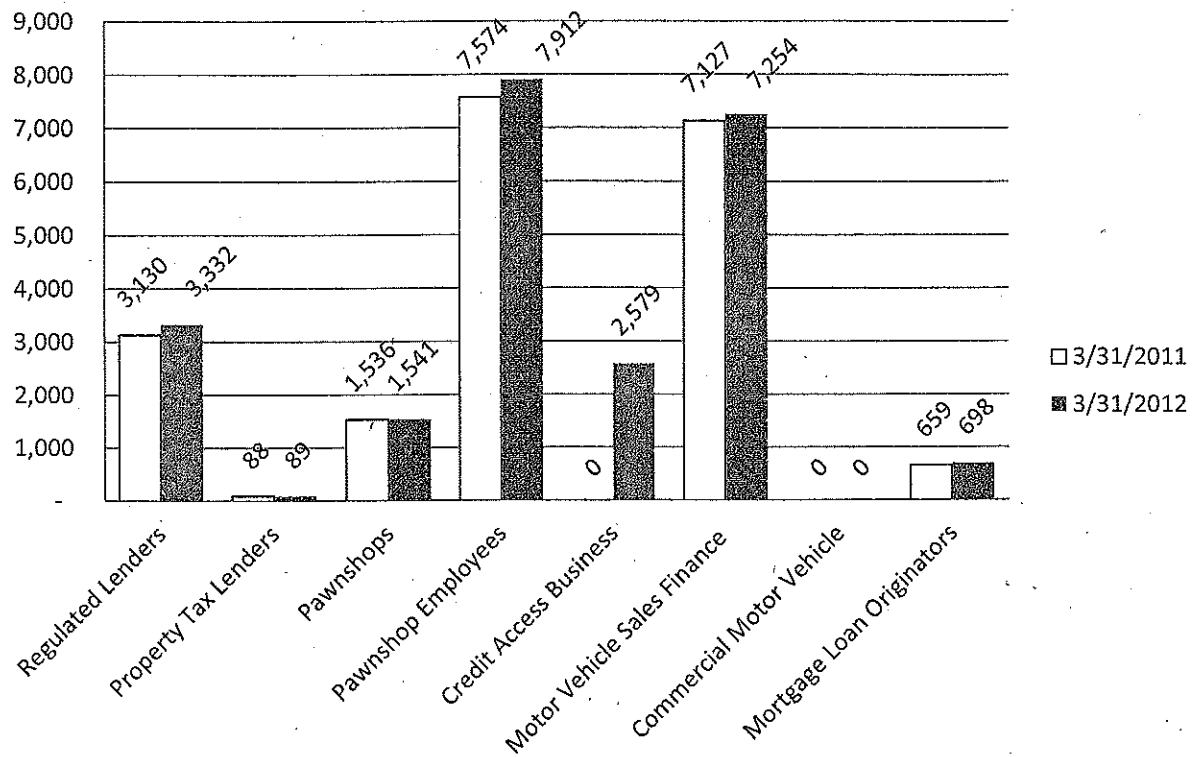
Licensing

The licensing department, as of March 31, 2012, as 1,610 pending license applications and has processed 1,615 applications. Credit Access Business applications are currently being reviewed for permanent licenses. The deadline to issue a provisional license was March 31, 2012. In addition, property tax loan license annual reports have been received and are being reviewed.

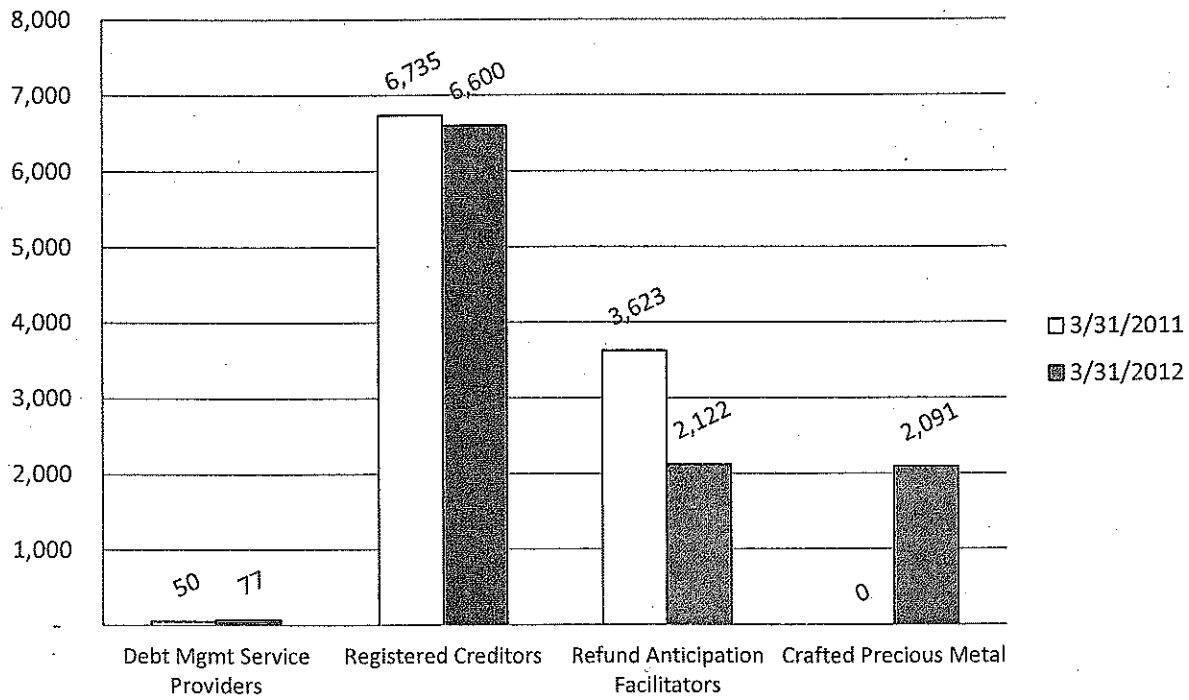
The information below displays a comparison of the license and registration levels as of March 31, 2011, and March 31, 2012.

	03/31/2011	03/31/2012	CHANGE
Regulated Lenders	3,130	3,332	202
Credit Access Business	0	2,579	2,579
Pawnshops	1,536	1,541	5
Pawnshop Employees	7,574	7,912	338
Motor Vehicle Sales Finance	7,127	7,254	127
Property Tax Lenders	88	89	1
Mortgage Loan Originators	659	698	39
Debt Management Service Providers	50	77	27
Registered Creditors	6,735	6,600	(135)
Crafted Precious Metal	0	2,091	2091
Refund Anticipation Lenders	3,623	2,122	(1,501)
Total	30,522	34,295	3,773

Comparison of License Levels



Comparison of Registration Levels



ADMINISTRATION REPORT

Credit Education

Highlights of the Consumer Education Area:

- To date, the Consumer Education has reached 172 citizens.
- OCCC is meeting with Go Direct staff to help promote their direct deposit campaign.
- The OCCC is partnering with Skills 4 Life program staff in Houston, Texas to participate as volunteers/consultants in their Game of Real Life event in June.
- OCCC is participating in Texas Saves week by conducting classes where there is a need and promoting the initiative on our website.
- Preparing to co-facilitate classes for Financial Awareness Month with Business & Community Lenders (BCL) of Texas Charter by the Small Business Administration (SBA) and NeighborWorks America.
- OCCC will update and revise the Financial Literacy Resource page on our website.

Accounting

The accounting department recently hired Christina Keeth as the new Accounting Technician. Her duties will include recording revenue, as well as handling leave accounting information. The department has recently developed a new reconciliation for the Precious Metals Fees. Lorraine Galvan the new accountant that was hired in December has fully taken over all accounts payable duties from the previous employee handling payments. Due to changes in staff and assignments, we are ensuring that everyone is attending Comptroller training to enhance their skills and to learn proper procedures to ensure state compliance.

Human Resources

During March 2012 the agency filled its two remaining Financial Examiner vacancies and Licensing Analyst vacancy. Two of the three positions were filled with internal candidates and represented career advancement opportunities for each; the third position was filled by an outside candidate with a background in the consumer financial services market.

Mr. Gary Meissner, Manager of Consumer Assistance, retired from the agency effective March 30, 2012. Mr. Meissner has been a member of the OCCC team for nearly fourteen years and oversaw the consumer complaint processes for more than a decade.

Since the last Finance Commission meeting the OCCC received one resignation within the Accounting Department, for the position of Accounting Technician II. The resignation was based on the employee's desire to return to school full-time and obtain a degree in engineering; the position was filled in mid-March 2012.

Positions Filled: March 2012	Candidate	Effective Date
Financial Examiner I Houston	Jeffrey Diggs	April 16, 2012
Financial Examiner I San Antonio	Dallas Teston Internal Advancement	April 1, 2012
Financial Examiner I Licensing Analyst	Deborah Skidmore Internal Advancement	April 1, 2012
Accounting Technician II	Christina Keeth	March 19, 2012

The agency currently has four vacancies: two as the result of internal advancement, one resulting from a transfer to another state agency, and the fourth resulting from retirement. All positions are actively being recruited and are anticipated to be filled by the end of April 2012.

Current Vacancies	Cause of Vacancy	Status
Investigator I	Advancement to Fin Exam I	Recruitment in Progress
Investigator I	Advancement to Fin Exam I	Recruitment in Progress
Administrative Assistant	Transfer to Another State Agency	Recruitment in Progress
Financial Examiner IV Manager, Consumer Assistance	Retirement	Internal Recruitment in Progress

Stakeholder Communication

During the second quarter the agency engaged in marketing efforts focused on effective and informative communication with stakeholders relating to Crafted Precious Metal Dealers (CPMD) registration requirements. Of note, informational material was distributed to law enforcement agencies within state counties providing general information on the CPMD registration and operations requirement and the support role of the OCCC. Several law enforcement officers and agencies have contacted the OCCC regarding the information, asking for additional information and resources, and referring consumer concerns regarding potential unregistered activities.

As part of its strategic planning process, the OCCC conducted a Customer Engagement Survey; survey invitations were mailed to a random sampling of consumers and industry participants who had interacted with the agency during the previous six months. The survey was closed the end of February 2012; responses and survey results are currently being reviewed and will be included in the agency's strategic plan. To further engage stakeholders and encourage continuous feedback, the agency will construct a Customer Engagement and Satisfaction feedback tool that will encourage and allow for regular timely feedback from the consumers and industry participants alike. It is anticipated this feedback tool will be available late Spring or early Summer.

Strategic Planning

The agency has met with industry stakeholders and department staff alike to discuss the strategic planning process. Stakeholder meetings and work sections survey and focus group meetings were conducted to identify priorities for the agency's focus during the next five years. Attached is a comparison of responses received and priorities identified by the two groups with several commonalities appearing on both lists. Priorities and items for consideration presented by both groups broadly encompass factors related to the use of technology to enhance delivery of services and work

processes, communication with internal and external agency stakeholders, and the retention and development of qualified staff. The agency staff believes technology will play a supporting role to the priorities and focus of the strategic plan, which will lead to more efficient internal processes and improved industry and consumer services; a belief that echoed in responses provided by the industry. Improved technology use and offerings should lead to efficient licensing and registration processing, enhanced internal and external communications, and the provision of educational resources and tools for consumers, OCCC stakeholders, and the general public. Both groups highlighted the need to focus on continued retention of qualified and competent staff and investment in the agency's human capital; suggestions for specific strategies were presented for consideration.

Initial drafting of the strategic plan is currently in progress, with first review by management and executive personnel on or about April 27, 2012.

Agency personnel have participated in the Survey of Organizational Excellence, with an agency response rate of 93%. Survey results and executive summaries are currently being studied by executive staff and will be shared with agency staff by mid-April.

OFFICE OF CONSUMER CREDIT COMMISSIONER

EXECUTIVE SUMMARY

As of February 29, 2012

	FY 2010	FY 2011	FISCAL YEAR 2012				
			1 st QTR	2 nd QTR	3 rd QTR	4 th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	7,820	23,711	6,475	3,102			9,577
Regulated Lenders Examinations	806	928	222	238			460
Pawnshop Examinations	364	627	129	125			254
Motor Vehicle Examinations	1,546	1,376	300	360			660
Property Tax Loan Examinations	15	68	0	3			3
Credit Access Business Examinations	0	0	0	0			0
Telephone Complaints Received	962	876	218	378			596
Written Complaints Received	1,292	1,339	232	250			482
Total Complaints Processed	2,310	2,265	367	632			999
% of Written Complaints Closed within 90 Calendar Days	92.77%	98.48%	97.30%	98.06%			97.71%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	175	168	41	29			70
Finalized	165	172	29	39			68
LICENSING AND REGISTRATION							
Number of Institutions -- Active							
Registered Creditors	7,550	6,865	6,361	6,580			6,580
Regulated Loan Licenses	2,662	2,691	2,748	2,798			2,798
Pawnshop Licenses	1,215	1,251	1,259	1,269			1,269
Pawnshop Employee Licenses	6,245	6,339	6,659	7,035			7,035
Motor Vehicle Sales Finance Licenses	5,448	5,473	5,703	5,805			5,805
Property Tax Loan Licenses	82	88	90	88			88
Credit Access Businesses	0	0	548	1,337			1,337
Crafted Precious Metal Dealers	0	0	0	1,933			1,933
Debt Management Service Providers	59	57	58	75			75
Refund Anticipation Loan Facilitators	3,485	3,840	3,840	2,122			2,122
Applications							
Business -- New	750	925	834	3,043			3,877
Business -- Change of Ownership	241	433	66	49			115
Pawnshop Employees -- New	2,555	2,589	814	630			1,444
HUMAN RESOURCES DATA							
Field Examiners Staffing	33	31	30	34			34
Total Staffing	60	58	61	67			67

Office of Consumer Credit Commissioner
Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2012 Target	2012 Actual	2012 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1				
COMPLAINT RESOLUTION				
1. # COMPLAINTS CLOSED	2,400	367	367	15.29% *
Quarter 1				
Quarter 2	2,400	632	999	41.63% *
<p>The performance in this area is below target because consumer complaints continue to come in at a reduced level. We expect them to increase as we implement the new credit access businesses and crafted precious metals provisions.</p>				
<p>The performance in this area is below target as complaints routinely fluctuate seasonally through the holidays and tax season. Generally the complaint volume is tracking slightly lower through the first half of this fiscal year.</p>				
2. # FIELD INVESTIGATIONS				
Quarter 1	80	17	17	21.25%
Quarter 2	80	21	38	47.50%
2-1-1				
EXAMINATION AND ENFORCEMENT				
1. # COMPLIANCE EXAMINATIONS PERFORMED	3,800	651	651	17.13% *
Quarter 1				

The performance in this area is below target because staff vacancies and training of new staff has hampered exam completion. Examination of credit access businesses will not begin until April 2012. We still expect to meet our annual goal.

Office of Consumer Credit Commissioner

Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2012 Target	2012 Actual	2012 YTD	Percent of Annual Target
Output Measures-Key				
Quarter 2	3,800	726	1,377	36.24% *

The performance in this area is below target primarily due to examiner staffing issues. During this quarter we had one retirement, one promotion, and one examiner on extended family medical leave. We are in the process of hiring and training replacement examiners. We have also begun the Credit Access Business (CAB) process. Four new examiners were hired for CAB examinations and are currently in training. Performance should improve in the second half of the fiscal year.

2-1-1	LICENSING INVESTIGATION			
	1. # BUSINESS APPLICATIONS PROCESSED			
	Quarter 1	4,500	342	7.60% *

The performance in this area is below target because the agency was preparing for the onset of the new credit access business license applications. The agency anticipates meeting this goal by the end of the fiscal year.

Quarter 2	4,500	949	1,291	28.69% *
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The performance in this area is below target as the licensing staff members have been concentrating on the credit access business license in order to meet the March 30th deadline for this industry. The agency expects to be on target for its goal by year end.

	2. # EMPLOYEE LICENSES PROCESSED			
	Quarter 1	2,400	811	33.79% *

Applications for pawnshop employee licenses are not evenly received throughout the year. Typically, they are submitted in cycles; therefore, the number of applications processed is ultimately affected in the same manner. The agency anticipates meeting and exceeding this goal for the fiscal year.

Quarter 2	2,400	769	1,580	65.83% *
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Applications for pawnshop employee licenses are not evenly received throughout the year. Typically, they are submitted in cycles; therefore, the number of applications processed is ultimately affected in the same manner. Performance exceeds the targeted level. The agency anticipates meeting and exceeding this goal for the fiscal year.

Office of Consumer Credit Commissioner
Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2012 Target	2012 Actual	2012 YTD	Percent of Annual Target
Output Measures-Key				
3-1-1	CONSUMER EDUCATION			
	1. # CONSUMERS RECEIVING SERVICES			
Quarter 1	300	130	130	43.33% *
Quarter 2	300	32	162	54.00%

The performance in this area is above target due to participation in a financial literacy event during this quarter. The agency has scheduled training classes for future quarters and anticipates meeting this goal by the end of the fiscal year.

* Varies by 5% or more from target.

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Commissioner

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MEMORANDUM

TO: Members, Finance Commission

FROM: Sealy Hutchings
General Counsel

DATE: April 2, 2012

SUBJECT: Legal Department Report

Enforcement Report

The Legal Department recently entered into several agreed orders with motor vehicle dealers who charged an increased documentary fee without filing for the fee increase with the Office of Consumer Credit Commissioner (OCCC). The agency believes that the recent enforcement activity will level off as more dealers timely file for their documentary fee increase with the OCCC. We anticipate that our department will be shifting more resources to examining the financial information submitted by dealers to support their documentary fee filings in excess of \$125.00.

The Legal Department issued a Preliminary Report Assessing Administrative Penalties against a motor vehicle dealer for charging excessive public official fees, excessive documentary fees, and unauthorized credit card fees in violation of the Texas Finance Code. The Legal Department negotiated a settlement with the motor vehicle dealer in which the dealer would perform restitution of its excessive and unauthorized fees and pay an additional administrative penalty in excess of \$20,000. The dealer is in the process of sending proof of restitution to the Legal Department before finalizing the settlement.

Review of Collateral Protection Insurance Products

Another company recently presented its collateral protection program to the Texas Department of Insurance (TDI) and the Office of Consumer Credit Commissioner (OCCC). Under the program, a creditor establishes a captive insurance company to provide protection for the creditor. Once the captive is established a master policy is issued and the captive will provide funds either over an internet money transfer mechanism (e.g., PayPal) or will ACH/wire

the funds. The company contends that because the money is provided over the internet, the situs of the program will be in cyber-space and therefore outside the scope of TDI's regulation. Both TDI and the OCCC will continue to review the program for compliance with Texas law.

Review of Debt Cancellation Agreements

During the 2011 legislative session, the Texas Legislature passed HB 2931, which creates a new statutory framework for motor vehicle debt cancellation agreements. The new law requires agreements to be approved by the OCCC before they can be used in connection with retail installment contracts for the sale of motor vehicles in Texas. The new law also requires the OCCC to approve or deny forms within 45 days of the receipt of the submitted agreement. This process necessarily involves a substantial amount of detailed work by both the legal and examination departments. As of April 4, 2012, the OCCC approved 274 agreements. Matt Nance and Margaret Griffith have worked diligently to make certain all submitters of deficient agreements were provided a detailed explanation of the deficiencies before a submitted agreement was denied.

Administrative Rule Report

The OCCC is moving forward with three rule actions for this Finance Commission Meeting. The first action is the adoption of amendments to 7 TAC Chapter 83, concerning Credit Access Businesses (CABs). These amendments are designed to provide when and how a consumer disclosure is to be given in connection with a payday or car title loan executed over the internet. The next action is the adoption of the agency's rule review 7 TAC Chapter 89, concerning Property Tax Lending. The third action consists of proposed amendments to 7 TAC Chapter 89. The proposed amendments streamline certain processes, improve consistency, and clarity, as a result of the agency's completed rule review of Chapter 89.

Interpretation Request for Attorney General

On Wednesday, March 28, 2012, Representative Burt R. Solomons forwarded a request for an interpretation to the opinion division of the Office of the Attorney General. In the request Representative Solomons presented two questions:

1. Does the tax assessor-collector for a taxing unit have the authority, acting alone, to transfer the taxing unit's tax lien in a case that otherwise meets the requirements of Section 32.06, Tex. Tax Code? If so, does the tax assessor-collector have the discretion to decline to transfer a tax lien notwithstanding a taxpayer's consent to the transfer? If the tax assessor-collector lacks the authority to unilaterally transfer the taxing unit's tax lien, does the governing body of the taxing unit have the discretion to decline to transfer its tax lien notwithstanding a taxpayer's consent to the transfer?

2. Does the transferred lien extend to and secure the closing costs associated with a property tax loan to the property owner, lien recordation fees, or any other costs incurred before or after the tax lien transfer?

Performance Report

The following chart is an overview of enforcement actions completed by the OCCC for the last two fiscal years and the current fiscal year-to-date. These figures only reflect enforcement actions that have been fully resolved with a final order; actions that are still pending are not included in the table. Our data does not reflect the work done by this agency to successfully bring businesses into compliance before a final administrative action is necessary. This data also does not account for actions to deny applications of those who fail to show eligibility for a license or assistance provided to license applicants requiring additional documentation to complete their applications. Our agency completed 71 application denial actions in fiscal year 2011. Currently, we have completed 27 denial actions for fiscal year 2012. It is difficult to predict the level and type of cases that our department will pursue, as many variable factors impact how each enforcement matter will evolve. However, the following table provides a snapshot of completed enforcement actions during the listed time period.

Enforcement Actions Completed			
	FYTD 2012	FY 2011	FY 2010
Revocation / Suspension Actions			
Regulated Loan License	0	0	5
Pawnshop License	1	1	0
Pawnshop Employee License	0	0	0
Motor Vehicle License	1	2	1
Total Revocation / Suspension Actions	2	3	6
Other Actions			
Cease & Desist Regulated	0	0	0
Cease & Desist Pawn	0	0	0
Cease & Desist Pawn Employee	0	0	0
Cease & Desist Motor Vehicle	0	1	0
Cease & Desist 345	0	0	0
Cease & Desist Unlicensed	8	29	17
Administrative Penalty Regulated	0	74	105
Administrative Penalty Pawn	3	8	2
Administrative Penalty Pawn Employee	5	10	7
Administrative Penalty Motor Vehicle	46	33	29
Administrative Penalty Property Tax	0	13	0
Total Other Actions	62	168	160
Total Enforcement Actions Closed	64	171	166

Final Orders Rendered

The agency issued 19 final orders since our last report.

Administrative Injunctions Rendered

The agency rendered three administrative injunctions since the date of our last report.

Administrative Hearings Held

There were no administrative hearings held since the date of our last report.

Administrative Hearings Dismissed

The agency dismissed three administrative hearings since the date of our last report.

Administrative Hearings Scheduled

The agency has 11 administrative hearings scheduled during the next 60 days.

Preliminary Reports on Administrative Penalties Rendered

The agency issued four preliminary reports since our last report.

Litigation

1. Civil Action No. A99CA198, *Today Publishing, Inc., Cash Today of the U.S.A., Inc., Nobel Craft and Junell Craft v. Crowder, et al.*, in the United States District Court for the Western District of Texas, Austin Division and Cause No. 99-03,673, *Today Publishing, Inc., Cash Today of Denton, Inc., Cash Today of Texas, Inc., and Cash Today of the USA, Inc. v. Leslie Pettijohn and the Office of the (sic) Consumer Credit Commissioner*, in Travis County District Court. Both of these cases have been settled and final orders have been entered. The state court action remains on the agenda pending performance on the settlement.

Interpretation Requests

The OCCC received a request for an official interpretation from Winstead, P.C. The request centers on whether a contemplated unsecured consumer credit product is covered under TEX. FIN. CODE §342.455, which is entitled: "Agreement for More Than One Cash Advance."

Open Records Requests

Since the date of our last report, the agency has processed and responded to 53 requests for information under the Texas Public Information Act, with one referral to the Attorney General.

Current Rule Actions and Adoptions from February 17, 2012 Meeting

Rule Item/Purpose	Proposal Date	Adoption Date/Status
Credit Access Businesses-Adopt Amendments 7 TAC, Part 5, Chapter 83-§83.6007, Consumer Disclosures To clarify the rule's application to an existing business practice for payday and auto title loans transacted by credit access businesses via the Internet; to provide guidance to the industry as to when and how the consumer disclosures should be provided under this business model	02/17/12	Presented for adoption 04/20/12
Property Tax Lenders-Rule Review 7 TAC, Part 5, Chapter 89 To adopt the completed review of Chapter 89 under Texas Government Code, §2001.039	Not applicable	Presented for Adoption 04/20/12
Property Tax Lenders-Proposed Amendments & New 7 TAC, Part 5, Chapter 89-Amendments to §§89.204 - 89.205, 89.301 - 89.304, 89.306 - 89.310, 89.404 - 89.406, 89.409, 89.504, 89.602, and 89.701 - 89.702; and New §89.207 and §89.312. To implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039; to implement streamlining improvements in the licensing process; to address issues discovered during the examination process; to improve consistency, grammar, punctuation, capitalization, and formatting; to provide clarification, more precise legal citations, and improved internal regulation references	04/20/12	
Tax Refund Anticipation Loans-Adopted Amendments 7 TAC, Part 5, Chapter 87-§87.102, Filing of New Application Implemented technical corrections resulting from the review of Chapter 87 under Texas Government Code, §2001.039; deleted unnecessary language and updated a statutory citation	12/16/11	02/17/12 Effective 03/08/12
Tax Refund Anticipation Loans-Adopted Rule Review 7 TAC, Part 5, Chapter 87 Adopted the completed review of Chapter 87 under Texas Government Code, §2001.039	Not applicable	02/17/12

April 20, 2012

OCCC Rule Schedule

Upcoming Rule Actions

Rule Item/Purpose	Proposal Date	Adoption Date/Status
Rule for Regulated Lenders-Proposed New 7 TAC, Part 5, Chapter 83, Subchapter A-§83.838, Loans with Multiple Advances To provide guidelines regarding loans with multiple advances and specify the scope of Texas Finance Code, §342.455	06/15/12	
Rules for Credit Access Businesses-Proposed Amendments 7 TAC, Part 5, Chapter 83, Subchapter B-§83.3002, Filing of New Application To establish a licensing procedure for credit access businesses to add branch locations after licensure	06/15/12	
Property Tax Lenders-Proposed Amendments & New 7 TAC, Part 5, Chapter 89-Amendments to §89.102, Definitions; and §89.601, Fees for Closing Costs; and New §89.208, Maximum Interest Charge To provide guidelines and clarification regarding maximum interest charges and fees for closing costs	06/15/12	
Administration-Rule Review 7 TAC, Part 5, Chapter 82 OCCC anticipates technical and clarifying corrections	06/15/12	
Consumer Credit Regulation-Rule Review 7 TAC, Part 1, Chapter 1-§1.201, Interpretations and Advisory Letters OCCC anticipates technical and clarifying corrections	06/15/12	
Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act-Proposed Amendments 7 TAC, Part 1, Chapter 2 To update licensing fee procedures	June or August 2012	
Motor Vehicle Installment Sales-Rule Review 7 TAC, Part 5, Chapter 84 OCCC anticipates changes to implement streamlining improvements in the licensing process; to improve consistency, grammar, punctuation, capitalization, and formatting; to provide clarification, more precise legal citations, and improved internal regulation references	August or October 2012	

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §83.6007, Concerning Consumer Disclosures for Credit Access Businesses.

PURPOSE: The purpose of the amendments to §83.6007 is to clarify the rule's application to an existing business practice for payday and auto title loans transacted by credit access businesses via the Internet. The amendments also provide guidance to the industry as to when and how the consumer disclosures should be provided under this business model.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC §83.6007 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC §83.6007.

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*Title 7. Banking and Securities**Part 5. Office of Consumer Credit Commissioner**Chapter 83. Regulated Lenders and Credit Access Businesses**Subchapter B. Rules for Credit Access Businesses**§83.6007. Consumer Disclosures*

The Finance Commission of Texas (commission) adopts amendments to §83.6007, concerning consumer disclosures for credit access businesses. The commission adopts the amendments to §83.6007 with changes to the proposed text as published in the March 2, 2011, issue of the *Texas Register* (37 TexReg 1448).

The commission received two written comments on the proposal: one from Texas Appleseed, a consumer group; and one from the Consumer Service Alliance of Texas (CSAT), an industry trade association. The comment from Texas Appleseed is generally opposed to the amendments, whereas the CSAT comment fully supports the amendments as proposed. The responses to the issues raised by the opposing comment follow the description of the amendments.

The purpose of the amendments to §83.6007 is to clarify the rule's application to an existing business practice for payday and auto title loans transacted by credit access businesses via the Internet. The amendments also provide guidance to the industry as to when and how the consumer disclosures should be provided under this business model.

As a note of background, during the 2011 legislative session, the 82nd Texas Legislature enacted House Bill 2592, which requires the commission to prescribe a consumer disclosure to be used by credit access businesses that engage in payday or auto title loans. The bill also requires credit access businesses to post certain fee

information and notices. In December 2011, the commission adopted rules providing the content of the consumer disclosures, related procedural rules, and rules concerning the posting of fee schedules and notices.

During the agency's ongoing collaboration with stakeholders, the agency was made aware of an Internet business practice not contemplated by the language of the rule. In this business practice, a commercial entity that is neither a credit access business nor a third-party lender, obtains information from consumers via the Internet in the regular course of business. The commercial entity is sometimes referred to as a "lead generator" or "third-party marketer." The third-party marketer then supplies the consumer information to providers of loan products that have the ability to select particular consumers to explore a potential lending relationship.

The adopted amendments add new subsection (f) to §83.6007 regarding Internet sales. The new subsection states that a credit access business must provide the required disclosure to the consumer immediately upon arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. If a consumer is directed to the credit access business's website by a third-party marketer, then the website to which the consumer is first directed must contain a direct link to the appropriate disclosure required by §83.6007. This direct link must be provided before the consumer is required to verify previously

provided information and before the consumer is required to provide additional information.

One commenter has "two areas of concern with this new language." The commenter states that the phrase "expression of the consumer's interest in obtaining a payday or auto title loan" is "unclear" and should be defined "[i]n order to protect personal and sensitive, customer information." The commenter continues by stating: "Requiring customers to share personal information before gaining access to the required disclosures undermines the purpose of disclosing information about loan terms and could lead to identity theft, problems with spam e-mails, or other violations of personal information."

Further explanation concerning the third-party marketer model will provide the necessary background information related to the commission's response to this comment.

When a consumer goes online and performs a search looking for information about obtaining a payday or auto title loan, that search will often link to the website of a lead generator or third-party marketer. The consumer will then input information on the third-party marketer's website. The third-party marketer then forwards the consumer's information to a variety of potential providers of loan products. The providers literally have seconds to decide whether to "accept the lead," i.e. select to contact the consumer to pursue a possible lending relationship.

During this rapid process, the third-party marketer does not know which provider will accept the lead, or if the lead will be accepted at all. This uncertainty puts the third-party marketer in a situation where it

would be impossible to comply with providing the disclosure under Texas Finance Code, §393.223. Without knowing which provider, including any credit access business, will accept the lead, the third-party marketer does not know "the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan" under §393.223(a)(1) and has no knowledge of "the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for" the specified periods of time under §393.223(a)(2). Similarly, the third-party marketer would also not be aware of "the three to five examples of the most common loans transacted by [the] credit access business" that accepts the lead, as outlined by §83.6007(e).

The third-party marketers as described in this business model maintain websites that are used as mere conduits, passing information through to the businesses that can potentially provide the services sought by consumers. The third-party marketers contemplated by the amendments do not take a credit application or perform a financial evaluation as provided under the rule. However, the agency acknowledges that third-party marketers could engage in activities that would require a credit access business license and credit services organization registration. Consequently, third-party marketers who by their conduct become subject to Texas Finance Code, Chapter 393 would be required to comply with the statute and rules, including the regulations concerning consumer disclosures. If the agency were to receive information concerning a third-party marketer engaging in business under

Chapter 393, the agency would address that situation through the enforcement process.

Subsection (f) applies to credit access businesses regulated under Texas Finance Code, Chapter 393, as those businesses are the parties obtaining or assisting the consumer in obtaining a payday or auto title loan. Moreover, only the particular credit access business that accepts a lead will have the information necessary to comply with the disclosure requirements under the statute and rule. Hence, the amendments specifically provide that "immediately upon the consumer's arrival at the credit access business's website," that "website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure" provided under §83.6007.

The commenter suggests that the beginning of §83.6007(f) could better read as follows: "A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website with information about covered loan options under §393.601. The required disclosure must be clearly visible and provided prior to the exchange of any personal or identifying information." The commenter's suggestion would replace the "expression of the consumer's interest" phrase with alternate language and would add a new sentence.

The commission shares the commenter's concerns about identity theft and the protection of personal information. In fact, the information collected by third-party marketers often serves as a means to prevent fraud and verify the identity of the consumer. The commission also agrees that the "expression of the consumer's interest" phrase is unclear and has removed it for this adoption. However, as outlined in the

discussion of the third-party marketer model, the commission does not agree that the disclosure must be "provided prior to the exchange of any personal identifying information." As stated by the supportive commenter: "[I]n an internet context, the disclosure often cannot be provided before the consumer supplies 'any' information --- such as their state of residence." Therefore, aside from the latter phrase included in the first commenter's suggestion, the commission accepts the remaining concepts in the suggested language for the beginning of subsection (f).

Accordingly, the commission adopts the first two sentences of §83.6007(f) revised as follows: "A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website."

The commenter outlines its second area of concern, stating: "The language of subsection (f) under §83.6007, as related to a 'lead generator' is problematic when taken together with §393.001, §393.002, and §393.601. The proposed language assumes that a lead generator is not required to register as a Credit Services Organization nor be licensed under the Credit Access Business licensing provision. Lead generators for payday and auto title loans generally assist a consumer in obtaining a payday or auto title loan." The commenter suggests that the introductory phrase of the third sentence of subsection (f) be revised by removing the term "lead generator" and instead referring to an entity not requiring a license. The commenter recommends that

the phrase be revised to read: "If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business. . . ."

As delineated in the discussion of the third-party marketer model, the agency disagrees with the commenter's premise regarding the role of third-party marketers in payday and auto title loans. Most third-party marketers contemplated by the amendments serve as conduits for passing information to credit access businesses and do not perform services for the consumer to obtain these loans. Although the commission disagrees with the commenter's conceptual theory, the commission believes that the commenter's suggested language provides better clarity as to which parties are subject to the rule. Thus, the commission has incorporated the commenter's phrase (quoted at the end of the preceding paragraph) into the beginning of the third sentence of §83.6007(f) for this adoption.

The commenter continues by suggesting that two new sentences be added to the end of subsection (f) concerning potential licensure and disclosure requirements for lead generators or third-party marketers. As stated earlier, the agency recognizes that there may be certain situations where a third-party marketer's actions would need to be addressed through enforcement procedures. However, these situations are highly fact-specific and must be determined on a case-by-case basis. Thus, the commission declines the last two suggested sentences by the commenter, as this issue is more appropriately handled through enforcement as opposed to the rulemaking process.

The amendments are adopted under Texas Finance Code, §393.223, which requires the Finance Commission to adopt by rule a consumer disclosure including the statutory information in a form prescribed by the commission.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.6007. Consumer Disclosures.

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(a) (No change.)

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(b) (No change.)

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(c) (No change.)

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(d) (No change.)

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each payday or auto title product sold by the business (e.g., three single payment payday examples of \$300, \$500, and \$700; three multiple payment auto title examples of \$1,000, \$1,500, and \$2,500). The credit access business should provide the consumer with the example form for the product and amount that most closely relates to the consumer's loan request.

(f) Internet sales. A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website. If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business, then the

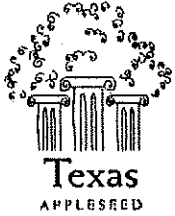
credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 20, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner



COMMENTS REGARDING PROPOSED AMENDMENTS TO 7 TAC §83.6007

To: Office of Consumer Credit Commissioner
From: Ann Baddour, Texas Appleseed
Date: April 2, 2012
Re: Proposed Amendments to 7 TAC §83.6007

The proposed subsection (f) states:

(f) Internet sales. A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website and the expression of the consumer's interest in obtaining a payday or auto title loan. If a consumer is directed to a credit access business's website by another commercial entity, such as a lead generator, then the credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information.

There are two areas of concern with this new language.

1. The language, "expression of the consumer's interest in obtaining a payday or auto title loan," is unclear, as it does not define what an "expression of...interest" entails. In order to protect personal and sensitive customer information, it is essential to define expression of interest in the broadest possible way. A business should provide the required disclosures before a potential customer has shared any personal information.

Many online applications require a potential customer to submit personal information in order to proceed with an inquiry, including phone number, e-mail address, driver's license number, social security number, among other personal information. See, for example, <https://www.acecashexpress.com/payday-loans/texas>. An expression of interest should entail the act of visiting a website with information about payday or auto title loans. Requiring customers to share personal information before gaining access to the required disclosures undermines the purpose of disclosing information about loan terms and could lead to identity theft, problems with spam e-mails, or other violations of personal information.

The language could better read: A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website the expression of the consumer's interest in obtaining a payday or auto title loan with information about covered loan options under §393.601. The required disclosure must be clearly visible and provided prior to the exchange of any personal or identifying information.

2. The language of subsection (f) under §83.6007, as related to a "lead generator" is problematic when taken together with §393.001, §393.002, and §393.601. The proposed language assumes that a lead generator is not required to register as a Credit Services Organization nor be licensed under the Credit Access Business licensing provision. Lead generators for payday and auto title loans generally assist a consumer in obtaining a payday or auto title loan. For example, the first business to come up on a google search for "payday loan" appears to be a lead generator: <https://quickercash.com/index.php?tag=11%7C104077917%7C6c9a24d10bda20239ad2c7082bf1ffe0a80f5df3&kw=payday+loan>. This website provides assistance to a consumer with regard to obtaining an extension of consumer credit for valuable consideration. Though the consumer may not pay the lead generator directly, lead generators generally receive valuable consideration for the service. Lead generators do not appear to be listed under §393.002 as persons not covered under Chapter 393 of the Texas Finance Code, and therefore should be required to be registered as a credit services organization §393.001(c) and also licensed as a Credit Access Business under §393.601 if they, "assist a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle title loan."

Therefore, the rule should instead read: "If a consumer is directed to a credit access business's website by another commercial entity, such as a lead generator that is not required to be licensed as a credit access business, then the credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information. Internet lead generators that assist consumers in obtaining a deferred presentment transaction or auto title loan as defined under §393.601 and receive valuable consideration for their services must be registered as a credit services organization and licensed as a credit access business. A lead generator must provide a consumer with the required disclosures prior to the exchange of any personal or identifying information."

Interest of Party Submitting Comments

Texas Appleseed's mission is to promote social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult systemic problems.



Date: February 2, 2012

To: Office of Consumer Credit Commissioner

From: Consumer Service Alliance of Texas

Re: CSAT Comments to Finance Commission on Texas Proposed Rule

Consumer Disclosures-Internet Sales: Subchapter B of 7 TAC Chapter 83; section 83.6007
Texas Register; March 2, 2012; Volume 37, Number 9, Pages 1448-1449

These comments are provided by the Consumer Service Alliance of Texas ("CSAT") regarding the Finance Commission of Texas Proposed Rules published in the Texas Register on March 2, 2012, to implement parts of HB 2592 dealing with Consumer Disclosures for internet sales for Credit Access Businesses.

CSAT appreciates the opportunity to participate in this rulemaking process and is available to answer any questions the Finance Commission or the Office of the Consumer Credit Commission ("OCCC") may have about these comments. CSAT has always supported effective and meaningful regulation of the small, short-term loan market, and was one of the principal stakeholders in the deliberations resulting in House Bill 2592 and House Bill 2594.

Information About CSAT

CSAT is a non-profit trade association that advocates for the protection of financial choice based on informed decision-making and personal responsibility for Texas consumers. CSAT represents the interests of consumers and credit service organizations ("CSOs") in Texas. Under House Bill 2592 and House Bill 2594, CSOs will be able to continue to provide the services they currently provide after obtaining a new license as "credit access businesses" under Chapter 393 of the Texas Finance Code, as amended effective January 1, 2012. As part of its activities, CSAT adopts "Best Practices" to guide its industry members.

A credit access businesses ("CAB") provides retail financial products and services to Texas consumers. From stores in neighborhoods across the state, hardworking Texans have access to small, short-term loans; auto-title loans; money orders; pre-paid telephone and debit cards; and other services to help them manage their finances.

One of the services CABs provide is securing an independent third-party lender for customers who need credit services to meet their immediate financial needs. CABs do not directly provide loans to consumers.

CSAT's mission is to work cooperatively with industry, consumers, and government officials to help ensure Texans have access to short-term loans and other financial service products in compliance with the law.

By working with consumers and member companies, CSAT helps guide the industry in compliance with laws and ethical lending standards. To help protect Texas consumers, CAB companies and lenders are required to comply with the Texas Credit Services Organizations Act as amended; the Texas Deceptive Trade Practices Act; the Texas Finance Code; the Federal Truth in Lending Act; the Texas Debt Collections Practices Act; the Federal Equal Credit Opportunity Act and Regulation B; the Federal Fair Credit Reporting Act and Regulation V; the Federal Trade Commission Act; the Gramm-Leach-Bliley Act; and various Federal Trade Commission regulations. CSAT also requires compliance with its industry leading CSAT Best Practices.

CSAT Comments

The Finance Commission of Texas proposed amendments to section 83.6007 concerning consumer disclosures provided by credit access businesses to customers. The purpose of the amendments is to clarify the rules application to internet transactions.

During the 2011 legislative session, the 82nd Texas Legislature enacted House Bill 2592, which requires the Finance Commission to prescribe by rule certain disclosures for credit access businesses to provide consumers. New section 393.223(a) of the Texas Finance Code requires a credit access business to provide the disclosure "[b]efore performing services" for the consumer.

In December 2011, the Commission adopted rules providing the content of the disclosures and related procedural requirements. As approved, section 83.6007 requires the consumer disclosures "to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a [loan]".

When a consumer uses the internet to search for credit in the form of a deferred presentment transaction or a motor vehicle title loan, it is a common business practice for the initial contact to be with a third-party marketing company. These third-party marketing companies obtain basic information from the consumer through their websites to determine the consumer's state of residence and other necessary information to market the inquiry in the regular course of business to eligible credit providers. The consumer then has the opportunity to determine whether his, or her, credit needs can be met through the services of a particular credit access business.

The intent of section 393.223(a) is the required disclosure may dissuade certain consumers from obtaining credit through a deferred presentment transaction or a motor vehicle title loan by illustrating transaction and refinancing costs and comparing other credit options. To be effective, the disclosure must be given in time for potential customers to reconsider how they choose to meet their credit needs. However, in an internet context, the disclosure often cannot be provided before the consumer supplies "any" information --- such as their state of residence.

The proposed amendments add a new subsection (f) to section 83.6007 to specifically address internet transactions. The new subsection clarifies a credit access business is required to provide the required disclosure immediately upon the consumer's arrival on the CAB's web site. If a consumer is directed to a CAB's web site by a third party marketing company, then the web site to which the consumer is first directed must contain a direct link to the appropriate disclosure before the consumer is required to verify previously provided information or provide additional information.

CSAT supports the proposed amendments. They clarify the appropriate notice must be supplied by a credit access business at the first possible moment a consumer accesses a CAB's web site which is consistent with the intent of HB 2592 (Texas Finance Code section 393.233(a)).

For More Information

For more information about these comments by CSAT, please contact the following: Robert W. Norcross, Jr., Vianovo, LP, 2225 W. Southlake Blvd., Suite 423, Southlake, Texas 76092, telephone 817-491-7110, fax 817-719-9200, email

B. Office of Consumer Credit Commissioner

3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Chapter 89, Concerning Property Tax Lenders.

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 89. The notice of the review was published in the *Texas Register* as required on March 16, 2012 (37 TexReg 1917). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments and new rules to 7 TAC Chapter 89 presented separately in these materials.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 89 as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 89 continue to exist and that the rules are repropose and readopted.

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*Title 7. Banking and Securities**Part 5. Office of Consumer Credit Commissioner**Chapter 89. Property Tax Lenders*

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders. Chapter 89 contains Subchapter A, concerning General Provisions (§§89.101 - 89.102); Subchapter B, concerning Authorized Activities (§§89.201 - 89.206); Subchapter C, concerning Application Procedures (§§89.301 - 89.311); Subchapter D, concerning License (§§89.401 - 89.409); Subchapter E, concerning Disclosures (§§89.501 - 89.507); Subchapter F, concerning Costs and Fees (§§89.601 - 89.603); and Subchapter G, concerning Transfer of Tax Lien (§§89.701 - 89.702). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 89 was published in the *Texas Register* as required on March 16, 2012 (37 TexReg 1917). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments and new rules to 7 TAC Chapter 89 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments and new rules to Chapter 89, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 89.

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B. Office of Consumer Credit Commissioner

4. Discussion of and Possible Vote to Take Action on the Publication for Comment of Amendments to and New Rules in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review.

PURPOSE: In general, the purpose of the amendments and new rules regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039. Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved internal regulation references. The new language is generally intended to address issues discovered during the examination process. The major formatting changes serve to implement streamlining improvements in the licensing process similar to those used for the newly licensed credit access businesses.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments to 7 TAC, Chapter 89 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC, Chapter 89.

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Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 89. Property Tax Lenders
§§89.204 - 89.702

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 89, §§89.204 - 89.205, 89.301 - 89.304, 89.306 - 89.310, 89.404 - 89.406, 89.409, 89.504, 89.602, and 89.701-89.702, concerning Property Tax Lenders. The proposed amendments affect rules contained in Subchapter B, concerning Authorized Activities; Subchapter C, concerning Application Procedures; Subchapter D, concerning License; Subchapter E, concerning Disclosures; Subchapter F, concerning Costs and Fees, and Subchapter G, concerning Transfer of Tax Lien. The commission also proposes new §89.207, concerning Files and Records Required; and §89.312, concerning Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry. Additionally, the agency is developing a proposal related to maximum interest charges and fees for closing costs to be presented at a future meeting.

The majority of the rules in Chapter 89 are being amended. Any Chapter 89 rule not included in this proposal will be maintained in its current form.

In general, the purpose of the amendments and new rules regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 89 was published in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1917). The agency did not receive any comments on the notice of intention to review. The agency circulated

an early draft of these proposed changes to interested stakeholders and has incorporated several changes suggested by stakeholders.

Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved internal regulation references. These technical corrections have been modeled after improvements made during the rule review of Chapter 83, Subchapter A, Rules for Regulated Lenders, as the property tax lender statute and rules were both patterned after their regulated lender counterparts. There are, however, two proposed new sections, existing sections with proposed new substantive language, and some significant formatting amendments. The new language is generally intended to address issues discovered during the examination process. The major formatting changes serve to implement streamlining improvements in the licensing process similar to those used for the newly licensed credit access businesses.

The individual purposes of the amendments to each section or new rules are provided in the following paragraphs. Specific explanation is included with regard to new rules, new substantive language, substantive changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor technical revisions and will be summarized more generally.

Concerning technical corrections in §89.204, the title of Texas Finance Code, Chapter 351, along with the short title and citation have been removed from §89.204(a). When Chapter 89 was first adopted, this language was needed in order to distinguish the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary. Similar deletions of these references occur throughout the rules. In addition, technical corrections have been made in §89.204 to provide parallel formatting.

The title to §89.205 has been amended by adding the words "and Internet" after "Loans by Mail." This section currently contains subsection (c), which states: "a loan made, negotiated, arranged, or collected by or through the Internet is considered a 'loan by mail.'" The "Internet" reference in the title is intended to assist Internet lenders in locating this regulation with more ease. In addition, §89.205 includes revisions related to parallel formatting and the removal of unnecessary Chapter 351 descriptors, as explained in the preceding paragraph.

Section 89.207, Files and Records Required, is a proposed new rule outlining the recordkeeping requirements for property tax lenders. These records must be maintained and made available for examination in compliance with Texas Finance Code, §351.008. Proposed §89.207 includes language throughout allowing for the use of paper or manual, electronic, optically imaged, or a combination of the preceding types of recordkeeping systems.

Paragraph (1) provides for the following required records: a loan register, general business and accounting records, advertising

records, adverse action records, and an official correspondence file. Paragraph (2) outlines the information that must be included in the record of an individual borrower's account. Paragraph (3) details the records that must be maintained for each individual property tax loan transaction file or be able to be produced within a reasonable amount of time. This paragraph includes files that must be maintained for all property tax loan transactions and the records associated with certain situations (e.g., residential property used for personal, family, or household use; loans delinquent for 90 consecutive days; loans where separate disclosures are provided under federal or state law; loans involving foreclosure or attempted foreclosure).

Paragraph (4) of proposed §89.207 outlines the procedures for making corrective entries to the borrower's account record. Paragraph (5) provides for the maintenance of litigation and foreclosure records. Paragraph (6) requires property tax lenders to maintain a disaster recovery plan. Paragraph (7) describes the record retention period and required availability of records for examinations.

Section 89.301, which contains the licensing definitions, has experienced several minor revisions relating to grammar and punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph and to "must" in paragraph (2)(E). Similar changes have been made to numerous rules in Chapter 89 by replacing "shall" with either "will" or "must," as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. Second, the hyphens have been removed from the phrases "privately held" and

"publicly held," as these hyphens are deemed unnecessary by modern usage guides. This section also includes the removal of unnecessary Chapter 351 descriptors and corrections to business terminology.

Section 89.302 regarding the filing of new applications has been revised and reorganized to increase the efficiency of the licensing process and to better align the rules with the streamlined application forms prepared by the agency. First, the provisions that have been relocated to provide proper alignment with the revised licensing forms are as follows: §89.302(1)(D) concerning statutory or registered agent has been relocated to proposed paragraph (1)(A)(iii), paragraph (1)(B) concerning owners and principal parties has been relocated to proposed (1)(A)(iv), paragraph (2)(C)(vii)(II) concerning statement of records has been relocated to proposed paragraph (1)(D)(iii), paragraph (1)(A)(iii) concerning authorized signatures has been renamed "Consent form" and relocated to proposed paragraph (1)(E), paragraph (1)(J) concerning financial statements has been relocated to proposed paragraph (2)(D), and paragraph (1)(K) concerning assumed names has been relocated to paragraph (2)(E).

In particular, one of the relocated provisions relates to the creation of a new separate licensing form, which is the consent form. This provision involves some minor wording changes in addition to its relocation. In proposed §89.302(1)(F), the following new language relating to the term "authorized individual" has been added: "Each applicant must submit a consent form signed by an authorized individual. . . . The following are authorized individuals"

Second, the wording and format of several taglines or form titles have been revised to correspond with the new licensing forms. These title changes are found in the following proposed provisions: §89.302(1)(A), (1)(A)(i), (1)(A)(iii) - (iv), (1)(B), (1)(C), (1)(C)(i) - (iii), (1)(D), (1)(D)(i) - (iii), (1)(E), (2)(D), and (2)(E). Other changes relating to form titles may be found in §89.308(a) and §89.309(a) and (b). Additionally, any surrounding provisions affected by the relocations have been renumbered or relettered as appropriate, along with other technical corrections.

In conjunction with the reorganization of §89.302, certain provisions have experienced revised language to improve clarity and flexibility. The amendments to §89.302(1)(A)(i) accommodate applicants (e.g., Internet businesses) that will not have a location in Texas. In proposed §89.302(1)(A)(iii), the term "statutory agent" has been replaced with "registered agent" throughout this clause. Parallel changes have also been made to §89.302(2)(C)(ii) and (iv). In reference to agents who are natural persons, a "physical residential address" is no longer required and has been replaced with a requirement for "a different address than the licensed location address." In addition, for registered agents not matching those on file with the Texas Secretary of State, an applicant must only submit "a certification from the secretary of the company identifying the registered agent" as opposed to the current language requiring certified minutes of the appointment.

A revision reflected throughout §89.302 relates to the percentage of ownership that must be disclosed by various entities. In the current rule, some of these percentages were 5% whereas others were 10%. In evaluating

the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency determined that 10% would achieve the needed information and provide more consistency for licensees. Consequently, 5% has been replaced with 10% in the following proposed provisions: §89.302(1)(A)(iv)(III)(-b-), (1)(A)(iv)(IV) and (1)(A)(iv)(V). A parallel change has also been made to §89.304, Change in Form or Proportionate Ownership, as found in subsection (c)(1).

In proposed §89.302(1)(A)(iv)(III) concerning disclosure of partners for limited partnerships, the first sentence is inconsistent with the requirements outlined in the related items. Accordingly, to clarify and resolve this issue, the first sentence has been revised as per *Texas Register* guidelines: "Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated."

Section 89.302(1)(C)(iii) concerning employment history has been revised by removing the phrase "with no gaps." As the rule still requires "a continuous 10-year [employment] history," the deleted language is not necessary.

Section 89.302(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. In response to an audit finding, the agency has clarified that while fingerprints are not generally required for these individuals, they may be required under certain circumstances. Fingerprints are not required if "fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and

the Federal Bureau of Investigation." Fingerprints may be requested in order to complete the agency's records.

Regarding the entity documents under §89.302(2)(C), several changes have been made in order to increase the efficiency of the licensing process. The provisions under current (2)(C)(ii)(II) and (III), and (2)(C)(iv)(II) and (III) had required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective provision and language has been added to reflect that such documents should only be provided upon request. The relocated provisions are proposed in §89.302(2)(C)(ii)(IV) and (V), and (2)(C)(iv)(IV) and (V).

To further streamline the licensing process, the current requirements in §89.302(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) have been deleted for this adoption. The current provisions required applicants to provide minutes electing the statutory agent. Upon review of the licensing process, the agency can streamline the process for verification of the registered agent by certification from the secretary of the company. Additionally, the verification of good standing may be obtained either directly from the Texas Comptroller of Public Accounts or upon request to the licensee if the Comptroller does not have an online record of the company. Thus, the phrase "if requested" has been added to proposed §89.302(2)(C)(ii)(VI) and (2)(C)(iv)(VI).

Concerning the required financial statements in proposed §89.302(2)(D), the number of days has been changed from 60 to 90, resulting in the first sentence reading as follows: "The financial statement must be dated no earlier than 90 days prior to the date of application." This revision better aligns with the quarterly reports that many applicants have readily available.

Another clarifying change concerning financial statements has been made to §89.302(2)(D). Although the types of financial statements vary by business entity, all submitted statements must comply with generally accepted accounting principles (GAAP). Complying with GAAP helps to demonstrate the applicant's budgetary integrity, which is important to the agency's determination that the applicant's financial responsibility, experience, character, and general fitness are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. Thus, language concerning GAAP compliance has been relocated to the "all entity types" provision.

Updates have been made to proposed §89.302(2)(E) to include revised citations to the Texas Business and Commerce Code provisions concerning assumed name certificates, as relocated during the 2009 legislative session. Additionally, corrections to business terminology have been made and unnecessary language has been removed throughout §89.302(D) and (E).

Technical corrections have been made to §89.303, Transfer of License, and to §89.306, Reportable Actions After Application. In particular, these changes provide parallel formatting and improve grammar, punctuation, and internal references.

Changes have been made to §89.304 and §89.306 to minimize unnecessary transfer applications and provide additional time for licensees to notify the agency of certain actions. In cases involving changes in organizational form and mergers resulting in different parent entities, the current language in §89.304(a) and (b) requiring a transfer has been revised to instead only require a license amendment and payment of the accompanying fee under §89.310. Similarly, a license amendment and fee requirement have been added to §89.304(c) when a change in proportionate ownership results in the exact same owners still owning the business (absent an owner crossing the 10% ownership threshold). In addition, throughout §89.304 and §89.306, the deadline for notifying the agency has been extended to 14 days rather than the current 10 days after the date of the event.

Section 89.307 describes how an application for a property tax lender license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. Subsection (a) has been revised for this proposal to clarify when a response will be provided by the agency, as follows: "A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance." In addition, technical corrections to improve grammar and citations have been made to §89.307.

Section 89.309, relating to License Status includes technical amendments to improve clarity and grammar. Clarification has been added with regard to license expiration in §89.309(d) in order to better

track the statutory provisions found in Texas Finance Code, §351.155.

Changes have been made to other sections requiring that a license amendment be filed in certain situations. Accordingly, these situations have been added to the fee provision concerning license amendments. Thus, §89.310(d) has been amended with the following phrases added before "or relocating an office": "changing the organizational form or proportionate ownership, providing notification of a new parent entity." In subsection (g), the phrase "not to exceed" has been added so that annual fees may be discounted when appropriate. Additionally, technical corrections to §89.310 include changes to improve punctuation and grammar and to remove unnecessary Chapter 351 descriptors.

Proposed new §89.312 outlines the requirement that a property tax lenders' employees who operate as residential mortgage loan originators with respect to property tax loans must obtain a license through the Nationwide Mortgage Licensing System and Registry.

The following sections contain technical corrections: §89.404, Effect of Criminal History Information on Applicants and Licensees; §89.405, Crimes Directly Related to Fitness for License; Mitigating Factors; §89.406, Effect of Revocation, Suspension, or Surrender of License; §89.409, License Reissuance; and §89.602, Fee for Filing Release. Of note, the revisions remove unnecessary language, revise internal regulation references, provide more precise legal citations, provide parallel formatting, and improve grammar and punctuation.

Section 89.504 contains amendments that provide clarification and flexibility concerning the requirements for the disclosure statement that must be delivered to the property owner. In subsection (a)(6), language has been added referencing collection costs in order to better track the statute. In §89.504(c)(2)(A), the new option to deliver the disclosure statement by email with the borrower's consent increases flexibility for lenders and property owners. In addition, subparagraph (F) has been added to §89.504(d) to provide for verification of email delivery.

Sections 89.701 and 89.702 provide the standard forms used to transfer a tax lien. An addition has been made to the permissible changes subsection of each rule in order to allow the title of both forms to be relocated to the top of the page. The amendments are intended to facilitate the electronic recording of these documents.

In §89.702, further flexibility is proposed with the addition of paragraph (3) to §89.702(b) regarding optional information. The new provision allows the following clarifying phrase to be added after the name of the county transferring the tax lien: "and all political subdivisions and districts for which it collects ad valorem taxes." This phrase parallels language used by the Comptroller and simplifies the listing of taxing units.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments and new rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five

years the amendments and new rules are in effect, the public benefit anticipated as a result of the changes from the previously enacted version of these rules will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. The general substance of these rules has already been in effect, as the majority of the amendments involve clarification and reorganization. Additionally, the proposed new rules incorporate into rule form the actions that licensees should already be performing in order to fulfill existing statutory requirements. Thus, there is no anticipated cost to persons who are required to comply with the amendments and new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments and new rules as proposed.

Comments on the proposed amendments and new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These amendments and new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally,

Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.204. Multiple Loans.

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §351.052(b) [~~(Acts 2007, 80th Leg., ch. 1220)~~] are to be construed as follows.

(1) Made or make [~~Make~~]-Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or arranged; negotiate or arrange [~~Arranged; Negotiate or Arrange~~]-Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or collect [~~Collect~~]-Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) (No change.)

§89.205. Loans by Mail or Internet.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §351.053(b) [~~(Acts 2007, 80th Leg., ch. 1220)~~] are to be construed according to the definitions contained in §89.204(a) of this title (relating to Multiple Licenses).

(b) - (c) (No change.)

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Required records. A licensee must maintain the following items:

(A) A loan register, containing the date of the property tax loan, the last name of the borrower, the "total tax lien payment amount" as defined in §89.601 of this title (relating to Fees for Closing Costs), and the loan number;

(B) General business and accounting records, including receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request, or made on his behalf or for his benefit, including foreclosure or legal fees applied to the borrower's account;

(C) Advertising records, including examples of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by OCCC staff, in order to show compliance with Texas Finance Code, §341.403;

(D) Adverse action records regarding all applications relating to Texas Finance Code, Chapter 351 property tax loans maintained for 25 months for consumer credit and 12 months for business credit; and

(E) An official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC, and examination reports issued by the OCCC.

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show;

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(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

(C) Name, address, and telephone number of borrower;

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(H) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(I) Individual payment entries itemized to show:

(i) date payment received (dual postings are acceptable if date of posting is other than date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) Any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to borrowers, with refund amounts itemized to show interest charges refunded, including the refund of any unearned points;

(K) Collection contact history, including a written or electronic record of each contact made by a licensee with the borrower or any other person and each contact made by the borrower with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) the promissory note or loan agreement signed by the borrower as required by Texas Tax Code, §32.06(e) and §32.06(e-1);

(ii) the deed of trust, contract, security deed, or other security instrument signed by the borrowers, if any, as provided for by Texas Finance Code, §351.002(2)(C) and Texas Tax Code, §32.06;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the disclosure statement to property owner as required by Texas Tax Code, §32.06(a-4)(1) and §89.504 of this title (relating to Requirements for Disclosure Statement to Property Owner) and §89.506 of this title (relating to Disclosures), including verification of delivery of the statement;

(v) the sworn document authorizing transfer of tax lien as required by Texas Tax Code, §32.06(a-1) and §89.701 of this title (relating to Sworn Document Authorizing Transfer of Tax Lien), including written documentation to support that the sworn document was sent by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property;

(vi) the certified statement of transfer of tax lien as required by Texas Tax Code, §32.06(b) and §89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the property tax lender from the taxing authority;

(vii) a final itemization of the actual fees, points, interest, costs, and charges that were charged at closing and to whom the charges were paid as specified by Texas Tax Code, §32.06(e);

(viii) if available, any tax certificate or other similar record used to determine the status of a tax account for the property subject to the tax lien as required by Texas Tax Code, §32.06(a-2) or authorization by property owner to pay the taxes;

(ix) copies of any other agreements or disclosures signed by the borrower applicable to the property tax loan;

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §226.23;

(C) If requested, copies of any payoff statements issued by the property tax lender or its agent as required by Texas Tax Code, §32.06(f-3) and §89.603 of this title (relating to Fee for Payoff Statement or for Information on Current Balance Owed);

(D) If the property tax loan is delinquent for 90 consecutive days, a notice of delinquency as required by Texas Tax Code, §32.06(f) including evidence that the notice was sent by certified mail;

(E) If received by the property tax lender, a copy of the notice of delinquency to the property tax lender from the mortgage servicer or holder of the first lien as specified by Texas Tax Code, §32.06(f-1) and §89.505 (relating to Requirements for Notice of Delinquency to

Transferee) and §89.506 (relating to Disclosures) of this title;

(F) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b);

(G) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the property tax lender acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; and

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and §351.0021(a)(5);

(H) Copies of any collection letters or notices sent by the property tax lender or its agent to the borrower;

(I) For a property tax loan where any separate disclosures or notices have been given, copies of the disclosures and notices sent (e.g., a copy of the Truth in Lending statement if the credit was not extended for commercial purposes; a copy of the notice to cosigner in a transaction involving a cosigner; a copy of the privacy notice);

(J) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records

required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures:

(I) any records pertaining to a judicial foreclosure under Texas Tax Code, §32.06(c)(1) including records from the property tax lender's attorneys, the court, or the borrower or borrower's agent;

(II) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) the notice to intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice ;

(IV) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021;

(VII) the foreclosure deed upon sale of the property;

(VIII) if the property is purchased at the foreclosure sale by the property tax lender, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(ii) For transactions involving non-judicial foreclosures:

(I) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(II) the notice to intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice ;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(IV) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure as required by Texas Tax Code, §32.06(c-1)(2);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) the Application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;

(VII) copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3, showing the date and time the citation was placed in the custody of the U.S. Postal Service;

(VIII) copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;

(IX) the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;

(X) the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;

(XI) the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;

(XII) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021;

(XIII) the foreclosure deed upon sale of the property;

(XIV) if the property is purchased at the foreclosure sale by the property tax lender, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(K) Any other documents necessary to establish the licensee's compliance with the law.

(4) Corrective entries to the borrower's account record, if justified, including the reason and supporting documentation for each corrective entry and any supporting documentation justifying the corrective entry, maintained under the following documentation guidelines:

(A) Dual recording in collection contact history permissible. The reason for the corrective entry may also be recorded in the collection contact history of the borrower's account record.

(B) Supporting documentation. The supporting documentation justifying the corrective entry may be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system.

(C) Manual recordkeeping systems. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection

contact history section of the manual borrower's account record.

(5) Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(6) Disaster recovery plan. A property tax lender must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(7) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for

either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§89.301. *Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351[, ~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220),~~] have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are [~~considered to be~~] principal parties:

(A) - (B) (No change.)

(C) officers of privately held [~~privately-held~~] corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 351;

(D) directors of privately held [~~privately-held~~] corporations;

(E) individuals associated with publicly held [~~publicly-held~~] corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held [~~privately-held~~]); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 351. One of the persons designated must [~~shall~~] be responsible for assembling and providing the information required on behalf of the applicant and must [~~shall~~] sign the application for the applicant;

(F) voting members of a limited liability company [~~corporation~~];

(G) (No change.)

(H) individuals designated as [a] principal parties [~~party~~] where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§89.302. *Filing of New Application.*

An application for issuance of a new property tax lender license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

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(1) Required application information.
All questions must be answered.

(A) Application for license
[Property Tax lender License].

(i) Location information. A physical street address must be listed for the applicant's proposed lending address, or if the applicant will have no such location, a statement to that effect must be provided. For applicants with a proposed location in Texas, a [A] post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) (No change.)

(iii) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.

~~[(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.]~~

~~[(I) If the applicant is a proprietor, each owner must sign.]~~

~~[(II) If the applicant is a partnership, each general partner must sign.]~~

~~[(III) If the applicant is a corporation, an authorized officer must sign.]~~

~~[(IV) If the applicant is a limited liability company, an authorized member or manager must sign.]~~

~~[(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]~~

(iv) ~~[(B) Disclosure of]~~
Owners and principal parties [Principal Parties].

(I) ~~[(i)]~~ Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interests [interest] must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(II) ~~[(ii)]~~ General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should

provide the same information as that required for general partnerships.

(III) [(iii)] Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated.

(-a-) [(i)] General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(-b-) [(ii)] Limited partners. The applicant should provide a complete list of all limited partners owning 10% [5%] or more of the partnership.

(-c-) [(iii)] Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(IV) [(iv)] Corporations. Each officer and director must be named. Each shareholder holding 10% [5%] or more of the voting stock must be named if the corporation is privately held [privately-held]. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% [5%] or greater.

(V) [(v)] Limited liability companies. Each "manager," "officer," and "member" owning 10% [5%] or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% [5%] or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% [5%] or greater.

(VI) [(vi)] Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(VII) [(vii)] All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

(B) Disclosure questions [(C) ~~Application Questionnaire~~]. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(C) Personal information. [(D) ~~Appointment of Statutory Agent and Consent to Service~~]. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas

~~Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.]~~

(i) ~~[(E)]~~ Personal affidavit ~~[Affidavit]~~. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(ii) ~~[(F)]~~ Personal questionnaire ~~[Questionnaire]~~. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(iii) ~~[(G)]~~ Employment history ~~[History]~~. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, ~~[with no gaps,]~~ accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(D) Additional requirements.

(i) ~~[(H)]~~ Statement of experience ~~[Experience]~~. Each applicant should provide a statement setting forth the details of the applicant's prior experience in

the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(ii) ~~[(I)]~~ Business operating plan ~~[Operation Plan]~~. Each applicant must provide a brief narrative explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(I) ~~[(i)]~~ the source of customers;

(II) ~~[(ii)]~~ the purpose(s) of loans;

(III) ~~[(iii)]~~ the size of loans;

(IV) ~~[(iv)]~~ the source of working capital for planned operations;

(V) ~~[(v)]~~ whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(VI) ~~[(vi)]~~ if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

~~(-a-)~~ ~~[(H)]~~ a list of the lenders for whom the applicant will be arranging or negotiating loans;

~~(-b-)~~ ~~[(H)]~~ whether the loans will be collected at the location where the loans are made; and [or]

~~(-c-)~~ ~~[(H)]~~ if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(iii) Statement of records.
Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(I) If the applicant is a proprietor, each owner must sign.

(II) If the applicant is a partnership, each general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

~~[(J) Financial Statement and Supporting Financial Information.]~~

~~[(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.]~~

~~[(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.]~~

~~[(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.]~~

~~[(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally~~

~~accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.]~~

~~[(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.]~~

~~[(K) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), as amended, an Assumed Name Certificate must be filed as provided in this subparagraph.]~~

~~[(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.02(7), as amended. An applicant must~~

~~provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.]~~

~~[(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.02(7), as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.]~~

(2) Other required filings.

(A) Fingerprints.

(i) (No change.)

(ii) For limited partnerships, if the owners and principal parties [Disclosure of Owners and Principal Parties] under paragraph (1)(A)(iv)(III)(-a-) [(1)(B)(iii)(I)] of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) (No change.)

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to

submit a new set of fingerprints in order to complete the OCCC's records.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002[, as amended].

(B) (No change.)

(C) Entity documents.

(i) (No change.)

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with [articles of incorporation and] any amendments;

~~[(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;]~~

(II) ~~[(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or]~~ a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form ~~[on the Disclosure of Owners and Principal Parties];~~

~~(III) [(IV)]~~ if the registered [statutory] agent is not the same as the one on file [registered agent filed] with the Office of the Texas Secretary of State, [;]

~~[(a) a copy of the minutes of corporate meetings that record the election of the statutory agent; or]~~

~~[(b)]~~ a certification from the secretary of the corporation identifying the registered [statutory] agent; [and]

(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) ~~[(V)]~~ if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held [Publicly-held] corporations. In addition to the items required for corporations, a publicly held [publicly-held] must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) (No change.)

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~~[(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;]~~

~~(II) [a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or] a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form [on the Disclosure of Owners and Principal Parties];~~

~~(III) [(IV)] if the registered [statutory] agent is not the same as the one on file [registered agent filed] with the Office of the Texas Secretary of State, [;]~~

~~[(a) a copy of the minutes of company meetings that record the election of the statutory agent; or]~~

~~[(b)] a certification from the secretary of the company identifying the registered [statutory] agent; [and]~~

~~(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;~~

~~(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;~~

~~(VI) [(V)] if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.~~

~~(v) - (vi) (No change.)~~

~~(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide[;]~~

~~[(F)] a certificate of authority to do business in Texas, if applicable, [; and]~~

~~[(H) a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.]~~

~~(viii) (No change.)~~

~~(D) Financial statement and supporting financial information.~~

~~(i) All entity types. The financial statement must be dated no earlier than 90 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information. All financial statements must be certified as true, correct, and complete, and must comply with generally accepted accounting principles (GAAP).~~

~~(ii) Sole proprietorships. Sole proprietors must complete all sections of the personal financial statement and the supporting financial information, or provide~~

a personal financial statement that contains all of the same information requested by the personal financial statement and the supporting financial information. The personal financial statement and supporting financial information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for

the trust or estate applicant should contain no personal financial information.

(E) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71, as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(F) [(D)] Bond. The commissioner may require a bond under Texas Finance Code, §351.102 [(Acts 2007, 80th Leg., ch. 1220);] when the commissioner finds that it would serve the public interest. When a bond is required, the commissioner will [shall] give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~] as provided in paragraph (2)(D) [(1)(J)] of this section. The person responsible for the day-to-day operations of the applicant's proposed new location must file a personal affidavit, personal questionnaire, and employment history [~~Personal Affidavit, Personal Questionnaire, and Employment History~~], if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§89.303. Transfer of License

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) - (3) (No change.)

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately held [~~privately-held~~] corporation;

(B) in which an existing stockholder owning 10% or more

relinquishes that owner's entire interest in a privately held [~~privately-held~~] corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately held [~~privately-held~~] corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held [~~publicly-held~~] corporation;

(5) any change in the membership interest of a licensed limited liability company:

(A) - (B) (No change.)

(C) in which a purchase or acquisition of control of 51% or more of any company that [~~which~~] is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of paragraphs (1) - (6) of this subsection [~~subsection (a)(1) - (6) of this section~~], and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) (No change.)

(c) Filing requirements. An application for transfer of a property tax lender license must be submitted in a format prescribed by

the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §89.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §89.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (e)(2) of this section~~] must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for Property Tax Lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~], as provided in [~~paragraph (1)(J)~~] of §89.302 of this title. The instructions in §89.302 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the application for license [~~Application for Property Tax Lender License~~] for the transfer event must file a personal affidavit, personal questionnaire, and employment history [~~Personal Affidavit, Personal Questionnaire, and Employment History~~], if not previously

filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (e)(2) of this section~~] must also be submitted.

(2) (No change.)

(d) Permission to operate. No business under the license may [~~shall~~] be conducted by any license transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the license transferee the authority to operate under the transferor's license pending approval of the license transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the license transferee in connection with the operation of the lending business. The permission to operate must be submitted before the license transferee takes control of the licensed operation. The agreement must [~~shall~~] set a definite period of time for the license transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) (No change.)

§89.304. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 14 ~~[10]~~ calendar days by filing a license amendment and paying the required fees ~~[the appropriate transfer application documents]~~ as provided in §89.310 ~~§89.303~~ of this title (relating to Fees ~~[Transfer of License]~~). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §89.303 of this title (relating to Transfer of License). If the [A] merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310 ~~[requires a transfer application pursuant to §89.303]~~. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 ~~[10]~~ calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same

owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% ~~[5%]~~ or greater. No later than 14 ~~[10]~~ calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §89.310 of this title. This subsection does not apply to a publicly held ~~[publicly-held]~~ corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held ~~[publicly-held]~~ parent corporation, although a transfer application may be required under §89.303 of this title.

(2) (No change.)

§89.306. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and that ~~[which]~~ relates to the qualifications for license, must be reported within 14 ~~[10]~~ calendar days after the person has knowledge of the action, fact or information.

§89.307. Processing of Application.

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that ~~[the application is complete and accepted for filing or stating that]~~ the

application is incomplete and specifying the information required for acceptance.

(b) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will ~~[shall]~~ be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 9 ~~[\$9.1 et seq.]~~ of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee will ~~[shall]~~ be refunded to the applicant. The investigation fee and the fingerprint processing fee in §89.310 of this title (relating to Fees) will ~~[shall]~~ be forfeited.

(f) Processing time.

(1) (No change.)

(2) When a hearing is requested following an initial license application denial, the hearing will ~~[shall]~~ be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application will ~~[shall]~~ be made after receipt of the proposal for decision from the administrative law judge.

(3) (No change.)

§89.308. Relocation.

(a) Notice to commissioner. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to Property Tax Lender License]~~ or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §89.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice must ~~[shall]~~ waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must ~~[shall]~~ identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§89.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a property tax lender license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment [~~filed on the Amendment to Property Tax lender License~~] or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment [~~filed on the Amendment to Property Tax lender License~~] or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) (No change.)

(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been [~~a fee is~~] paid by the due date for license renewal. A licensee

that pays the annual assessment fees [fee] will automatically be renewed even though a new license may not be issued.

§89.310. Fees.

(a) New licenses.

(1) Investigation fees. A \$200 nonrefundable [~~non-refundable~~] investigation fee is assessed each time an application for a new license is filed.

(2) (No change.)

(b) License transfers. An applicant must pay a \$200 nonrefundable [~~non-refundable~~] investigation fee for each license transfer.

(c) Fingerprint processing. A nonrefundable [~~non-refundable~~] fee as prescribed by the commissioner will be charged to recover the [~~to~~] costs of investigating each principal party's fingerprint record.

(d) License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating an office.

(e) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed [of] \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed [that is] \$0.03 per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 [(Acts 2007, 80th Leg., ch. 1220),] in accordance with the most recent annual report filing required by Texas Finance Code, §351.164 [(Acts 2007, 80th Leg., ch. 1220)].

(2) - (3) (No change.)

§89.312. Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry.

As required by Texas Finance Code, §351.0515, a property tax lender's individual employees who, for actual or expected compensation or gain, act as residential mortgage loan originators in the making, transacting, or negotiating of a property tax loan for a principal dwelling, are required to obtain a license through the Nationwide Mortgage Licensing System and Registry.

§89.404. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity

reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character, and the information gathered is relevant to the licensing or enforcement action decision as described in subsections (b) - (d) of this section [below].

(b) (No change.)

(c) Factors in determining whether conviction relates to occupation of property tax lender. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner will [shall] consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) - (4) (No change.)

(d) Effect of criminal convictions [conviction] on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 351, [Property Tax

Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)]. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph [below] are considered to be crimes involving moral character:

(A) - (H) (No change.)

(2) Effect of other criminal convictions. The commissioner may deny an application for a license[;] or revoke an existing license, if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a property tax lender that [who] originates or obtains loans [written] under Texas Finance Code, Chapter 351. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §89.406 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§89.405. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 351[; ~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220);~~] involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, crimes [a-crime] involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, [a-crime

involving] failure to file a governmental report or filing a false report, or [a-crime involving] the use or threat of force against another person are [; is a-crime] directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner will [shall] consider, in addition to the factors listed in §89.405 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the [following] factors listed in paragraphs (1) - (6) of this subsection, as specified in Texas Occupations Code, §53.023:

(1) - (4) (No change.)

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party[;] the sheriff or chief of police in the community where the principal party resides[;] and other persons in contact with the convicted principal party.

§89.406. Effect of Revocation, Suspension, or Surrender of License.

(a) Effect on existing contracts. Revocation, suspension, or surrender of a

license does not affect a preexisting contract between a lender and a borrower, except no interest may be charged or received by the lender following the revocation, suspension, or surrender of its license. Alternatively, a lender whose license is revoked or suspended may transfer or sell its accounts to a licensed property tax lender, which [who] may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, Chapter 351. [~~§351.001, et seq. (Acts 2007, 80th Leg., ch. 1220)~~].

(b) (No change.)

§89.409. License Reissuance.

In the event of reissuance of a license for any reason, the licensee must [shall] return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) - (5) (No change.)

(6) a statement that the property tax loan may include unpaid property taxes, penalties, [and] interest, and collection costs paid as shown on the tax receipt;

(7) - (16) (No change.)

(b) (No change.)

(c) Delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, a property tax lender must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a) of this title, to the owner of the property.

(A) Method of delivery. The disclosure statement may be delivered by U.S. mail, with prepaid first-class postage, or via facsimile or email if the property owner consents [~~available to the property owner~~]. Alternatively, property tax lenders may deliver the disclosure statement by certified mail with return receipt requested, by using a commercial delivery service with tracking abilities, or by using a courier service.

(B) - (C) (No change.)

(d) Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner as prescribed in subsection (c)(2) of this section.

(A) - (E) (No change.)

(F) Verification of delivery by email.
For disclosures delivered via email, a dated

reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with §101(c) of the Electronic Signatures in Global and National Commerce Act will constitute a rebuttable presumption for sufficient delivery.

(e) (No change.)

§89.602. Fee for Filing Release.

(a) Allowable fee components. Under Texas Tax Code, §32.06(b), a property tax lender may charge [a ~~property owner~~] the following for filing the release:

(1) - (3) (No change.)

(b) - (c) (No change.)

§89.701. Sworn Document Authorizing Transfer of Tax Lien.

(a) - (c) (No change.)

(d) Permissible changes.

(1) - (2) (No Change.)

(3) Title. The title of the sworn document may be relocated to the top of the form.

§89.702. Certified Statement of Transfer of Tax Lien.

(a) (No change.)

(b) Optional information. A tax assessor-collector may only include the optional information contained in this subsection or attach information as provided in subsection (d) of this section. Any other information included on or added to the standard form may

invalidate the satisfaction of Texas Tax Code, §32.06(b). The tax assessor-collector may require that the following information be added to the certified statement:

(1) (No change.)

(2) a statement that the tax assessor-collector's certification of the amounts paid and that the transfer occurred does not constitute the rendering of legal advice;[-]

(3) after identifying the county/taxing unit(s) transferring a lien or liens as provided under subsection (a)(4) of this section, the following phrase: "and all political subdivisions and districts for which it collects ad valorem taxes."

(c) (No change.)

(d) Permissible changes.

(1) Multiple account transfers. In the case of multiple account transfers, the information required by subsection (a)(3), (4), (5), and (6) of this section may be provided in table or list format as an attachment to the standard form.

(2) Title. The title of the certified statement may be relocated to the top of the form.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 20, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

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B. Office of Consumer Credit Commissioner

5. Discussion of and Possible Vote to Adopt a Resolution Recommending that the Legislature Consider Legislation to Support Uniformity of Laws Governing Credit Access Businesses.

PURPOSE: The purpose of the resolution is to recommend that the Texas Legislature consider legislation to support uniformity of laws governing credit access businesses in Texas.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the resolution.

RECOMMENDED MOTION: I move that we approve the resolution to recommend that the Texas Legislature consider legislation to support uniformity of laws governing credit access businesses in Texas.

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FINANCE COMMISSION OF TEXAS

RESOLUTION SUPPORTING UNIFORMITY OF LAWS GOVERNING CREDIT ACCESS
BUSINESSES

WHEREAS, in 2011, the Texas Legislature enacted legislation that amended Chapter 393 of the Texas Finance Code, providing licensure and disclosure requirements for credit access businesses that assist consumers in engaging in deferred presentment transactions and motor vehicle title loans; and,

WHEREAS, the Finance Commission of Texas has carefully considered and adopted rules implementing this legislation; and,

WHEREAS, the legislation and rules governing credit access business have statewide effect; and,

WHEREAS, at least two municipal jurisdictions have enacted ordinances creating different requirements from the legislation and rules exclusively for credit access businesses; and,

WHEREAS, these ordinances increase complexity of compliance and training for Texas credit access businesses, which are now subject to different requirements in the various Texas cities where they operate; and,

WHEREAS, these differing requirements have the potential to create confusion and disparate impact on the part of consumers who are assisted by credit access businesses subject to dissimilar requirements, even potentially within a single ZIP code; and

WHEREAS, the adoption of distinctly different ordinances among multiple jurisdictions could create potential conflict with state law, resulting in the possibility of lengthy and costly litigation.

NOW, THEREFORE, BE IT RESOLVED, that the Texas Finance Commission does hereby request that the Texas Legislature consider amending the Texas Finance Code to improve consistency of regulation through a uniform set of laws governing credit access businesses in Texas.

*Given under my hand at Austin, Texas
On the 20th day of April
In the year two thousand and twelve*

William J. White
Chair, Finance Commission of Texas